

RECORDATION NO. 21224-F FILED

DEC 21 '07 -12 30 PM

**SURFACE TRANSPORTATION BOARD**

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OF COUNSEL  
URBAN A. LESTER

December 21, 2007

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Re: Wheeling & Lake Erie Railway

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Assignment and Assumption Agreement, dated as of December 21, 2007, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the documents previously filed with the Board under Recordation Number 21224.

The names and addresses of the parties to the enclosed document are:

**Seller/ Assignor:** Lloyds TSB Equipment Leasing (No. 5) Limited  
25 Gresham Street  
London EC2V 7HN  
United Kingdom

**Buyer/Assignee:** Babcock & Brown Rail Funding LLC  
1 Dag Hammarskjold Plaza  
885 Second Avenue, 49<sup>th</sup> Floor  
New York, NY 10017

Mr. Vernon A. Williams  
December 21, 2007  
Page 2

Head Lessee: North America Rail Leasing #2 LLC  
(d/b/a Babcock & Brown Rail Leasing)  
885 Second Avenue, 49th Floor  
New York, NY 10017

A description of the railroad equipment covered by the enclosed document  
is:

50 gondola railcars: WE 2600 - WE 2649.

A short summary of the document to appear in the index is:

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$35.00 payable to the order of  
the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the  
undersigned.

Very truly yours,



Robert W. Alvord

RWA/sem  
Enclosures

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SURFACE TRANSPORTATION BOARD

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement dated as of December 21, 2007 (this "Agreement"), is between Lloyds TSB Equipment Leasing (No. 5) Limited, a limited liability company organized under the laws of England and Wales (the "Seller"), North America Rail Leasing #2 LLC (the "Head Lessee") and Babcock & Brown Rail Funding LLC, a Delaware limited liability company (the "Buyer"). Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Purchase Agreement (defined below), which also contains rules of usage that apply to terms defined therein and herein.

**RECITALS:**

- A. The Seller is the owner of the railcars described on Exhibit A hereto (the "Equipment").
- B. Concurrently herewith, the Seller and the Buyer have executed and delivered the Purchase Agreement [COMBI I/BBRF] dated as of the date hereof (as amended, modified or supplemented, the "Purchase Agreement") in respect of the Equipment.
- C. The Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller, the Head Lessee and the Buyer on the date hereof.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. Assignment. Effective as to each item of Equipment from and after the date hereof, pursuant to Section 11 of the Head Lease the Seller directs the Head Lessee to assign, transfer and convey to the Buyer, and each of the Seller and the Head Lessee, respectively, hereby assigns, transfers and conveys to the Buyer all of the Seller's and the Head Lessee's respective rights, title and interest, except as reserved under Section 2.1 of the Purchase Agreement, in and to such item of Equipment and assigns to the Buyer all of the Seller's and the Head Lessee's respective rights and obligations, except to the extent constituting Existing Obligations, under each of the agreements listed on Exhibit A hereto as they relate to the applicable Equipment and all of the other agreements and documents listed in Schedule 1 to the Purchase Agreement (collectively, the "Assigned Operative Agreements").

Notwithstanding the foregoing, each of the Seller, and the Head Lessee and the Buyer shall continue to be entitled to the benefit of any applicable rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the date hereof, as specified in the Purchase Agreement.

2. Acceptance of Assignment; Effect of Assignment. The Buyer accepts the assignment contained in Section 1 and agrees to be bound to the same extent as the Seller and the

Head Lessee by all the terms of the Assigned Operative Agreements. Effective on and after the date hereof, after giving effect to the transaction described herein, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the applicable Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Seller shall be deemed to mean the Buyer.

3. Amendments. No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

4. Notices. All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.

5. Headings. The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

6. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

7. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

8. Recordation. The Buyer and the Seller agree to record this Agreement with the Surface Transportation Board and with the Registrar General of Canada, if applicable, to evidence the assignment by the Seller to the Buyer of the Seller's rights under the Lease, if and only if the Lease has been recorded with the Surface Transportation Board and/or the Registrar General of Canada, as the case may be.

9. Further Assurances. Each of the parties hereto covenants and agrees that, at any time and from time to time after the date hereof, at the request and expense of the requesting party hereto, it will promptly and duly execute and deliver, or cause to be executed and delivered, to the requesting party all such further instruments and take all such further action as may be reasonably requested by such party to more effectively sell, transfer, assign, and convey each item of Equipment.

10. Binding Agreement. This Agreement shall be binding upon the Seller and the Buyer, their respective successors and permitted assigns, for the use and purposes set forth and referred to herein, effective as of the date hereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

LLOYDS TSB EQUIPMENT LEASING (NO. 5)  
LIMITED, as Seller

By: \_\_\_\_\_

Name:

Title:

*Richard Barker*  
RICHARD BARKER  
SOLICITOR

NORTH AMERICA RAIL LEASING #2 LLC, as  
Head Lessee

By: \_\_\_\_\_

Name:

Title:

BABCOCK & BROWN RAIL FUNDING LLC, as  
Buyer

By: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

LLOYDS TSB EQUIPMENT LEASING (NO. 5)  
LIMITED, as Seller

By: \_\_\_\_\_  
Name:  
Title:

NORTH AMERICA RAIL LEASING #2 LLC, as  
Head Lessee

By:  \_\_\_\_\_  
Name: Larry Littlefield  
Title: Vice President

BABCOCK & BROWN RAIL FUNDING LLC, as  
Buyer

By:  \_\_\_\_\_  
Name: Larry Littlefield  
Title: Vice President

State of New York )  
County of New York )

On this, the 11<sup>th</sup> day of December, 2007, before me, a Notary Public in and for said County and State, personally appeared Larry Littlefield, the Vice President of Babcock & Brown Rail Funding LLC, who acknowledged himself to be a duly authorized officer of Babcock & Brown Rail Funding LLC, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: Clementina Capasso  
Notary Public

My Commission Expires:

Residing in:

**CLEMENTINA CAPASSO**  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. UTCAS120806  
QUALIFIED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES DEC. 27, 2008



State of New York )  
County of New York )

On this, the 11<sup>th</sup> day of December, 2007, before me, a Notary Public in and for said County and State, personally appeared Larry Gifford, the Vice President of North America Rail Leasing #2 LLC, who acknowledged ~~himself~~ herself to be a duly authorized officer of North America Rail Leasing #2 LLC, and that, as such officer, being authorized to do so, ~~he~~ she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: Clementina Capasso  
Notary Public

My Commission Expires: **CLEMENTINA CAPASSO**  
**NOTARY PUBLIC, STATE OF NEW YORK**  
**NO. 01CA6120806**  
**QUALIFIED IN NEW YORK COUNTY**  
Residing in: \_\_\_\_\_ **MY COMMISSION EXPIRES DEC. 27, 2008**





State of New York )  
County of New York )

On this, the 11<sup>th</sup> day of December, 2007, before me, a Notary Public in and for said County and State, personally appeared Richard Barker, the attorney of Lloyds TSB Equipment Leasing (No. 5) Limited, who acknowledged himself/~~herself~~ to be a duly authorized officer of Lloyds TSB Equipment Leasing (No. 5) Limited, and that, as such officer, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: Nancy J. Neubaum  
Notary Public  
My Commission Expires: 04/10/2011  
Residing in: New York, NY

NANCY J. NEUBAUER  
Notary Public, State of New York  
No. 01NE5041602  
Qualified in New York County  
Commission Expires April 10, 2011

**Exhibit A**  
**(to Assignment**  
**and Assumption Agreement)**

**EQUIPMENT AND LEASES**

<b>Lease #</b>	<b>Lessee</b>	<b># of Units</b>	<b>Year Built/ Manufacturer</b>	<b>Description</b>	<b>Reporting Marks</b>	<b>Casualty Marks</b>
1	Wheeling & Lake Erie Railway	50	1998 by Thrall	E534 - 52' 5-1/2" sided Mill Gondolas	WE 2600-2649, inclusive	None.
2	Off Lease	230	2002 by Johnstown America	K341 - 4,300 CF aluminum rapid discharge open top hopper cars with rotary couplers (Autoflood II)	FLCX 200200-200429, inclusive	None.
3	BC Rail Partnership	66	2002 by Gunderson	A406 - 50 foot, 100-ton Plate F Boxcars with single 12' plug doors, 15" EOCC, 60K nailable steel floors and smooth interiors	AOK 14105-14170, inclusive	None.

Lease #	Lessee	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
4	Canadian National Railway Company	73	2003 by Gunderson-Concarril, S.A. de C.V.	AAR Code B617, 60' Plate E Boxcars with double 8' sliding doors, 286,000 GRL	AOK 120001-120003 inclusive; 120005 - 120007 inclusive, 120010, 120012, 120017 - 120019 inclusive, 120021, 120023 - 120025 inclusive, 120029, 120031, 120035 - 120036 inclusive, 120038, 120040-120046 inclusive, 120048 - 120052 inclusive, 120056 - 120057 inclusive, 120059, 120061, 120063, 120065, 120071 - 120073 inclusive, 120076, 120081, 120083, 120086, 120091-120094 inclusive, 120096-120098 inclusive, 120102 - 120103 inclusive, 120105 - 120106 inclusive, 120109 - 120114 inclusive, 120116, 120119, 120125, 120128, 120136 - 120139 inclusive, 120141, 120143 - 120144 inclusive	AOK 120020, 120089
5	The Burlington Northern and Santa Fe Railway Company	199	5-2003 and 195-2004 by American Railcar Industries, Inc.	AAR Code F483, 73' Centerbeam Flatcars with riserless deck, 286,000 GRL	2003 built: BNSF 562675- 562678, inclusive; BNSF 562680  2004 built: BNSF 562679; BNSF 562681-562874, inclusive	BNSF 562819
6	Soo Line Railroad Company	25	2004 by American Railcar Industries, Inc.	73' riserless deck Centerbeam Flatcars, AAR Car Type Code F483, 286,000 GRL	SOO 600100-600124, inclusive	None

Lease #	Lessee	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
7	Canadian National Railway Company	148	2004 by TrentonWorks Limited	73' Centerbeam Flatcars with riserless deck, 286,000 GRL	AOK 29000-29149, inclusive	AOK 29007, 29010

1. Railroad Equipment Lease dated as of January 30, 1998, between Babcock & Brown Rail Funding LLC (as assignee of Joseph Leasing Ltd. (f/k/a DJJ Leasing Ltd.)) and Wheeling & Lake Erie Railway.

Amendment No. 1 to the Railroad Equipment Lease entered into November 20, 1998, between Babcock & Brown Rail Funding LLC (as assignee of Joseph Leasing Ltd. (f/k/a DJJ Leasing Ltd.)) and Wheeling & Lake Erie Railway.

Amendment No. 2 to the Railroad Equipment Lease entered into January 12, 2001, between Babcock & Brown Rail Funding LLC (as assignee of Joseph Leasing Ltd. (f/k/a DJJ Leasing Ltd.)) and Wheeling & Lake Erie Railway.

2. Off Lease N/A
3. Lease Agreement made as of March 1, 2002, between Babcock & Brown Rail Funding LLC (as assignee of Greenbrier Leasing Corporation) and BC Rail Partnership.

Schedule No. 01 to Lease Agreement made as of March 1, 2002, between Babcock & Brown Rail Funding LLC (as assignee of Greenbrier Leasing Corporation) and BC Rail Partnership.

4. Lease Agreement made as of March 1, 2002, by and between the Seller, as assignee of Greenbrier Leasing Corporation, and BC Rail Partnership.

Lease Extension Agreement No. 01 is entered into as of May 1, 2007 between North American Rail #2 (d/b/a Babcock & Brown Rail Leasing) (as ultimate assignee of Greenbrier Leasing Corporation) and Canadian National Railway Company (as assignee of BC Rail Partnership).

5. Lease Agreement dated as of September 1, 2000, by and between the Seller (as assignee of Greenbrier Leasing Corporation and its assigns) and The Burlington Northern and Santa Fe Railway Company.

Rider No. 10 to Lease Agreement entered into effective December 1, 2003, between the Seller (as assignee of Greenbrier Leasing Corporation and its assigns) and The Burlington Northern and Santa Fe Railway Company.

6. Lease Agreement made as of September 1, 2003, by and between the Seller (as assignee of Greenbrier Leasing Corporation) and Soo Line Railroad Company.

Schedule No. 3 to Lease Agreement made as of March 1, 2004, by and between the Seller (as assignee of Greenbrier Leasing Corporation) and Soo Line Railroad Company.

7. Lease Agreement made as of March 1, 2002, by and between Greenbrier Leasing Corporation and BC Rail Partnership.

Schedule No. 5 to Lease Agreement made as of February 1, 2004, by and between Greenbrier Leasing Corporation and BC Rail Partnership.

Lease Extension Agreement No. 01 is entered into as of July 1, 2007 between North American Rail #2 (d/b/a Babcock & Brown Rail Leasing) (as ultimate assignee of Greenbrier Leasing Corporation) and Canadian National Railway Company (as assignee of BC Rail Partnership).

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: 12/21/07



\_\_\_\_\_  
Robert W. Alvord